

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

JAMES A. BOYD,

Plaintiff,

v.

RICHARD MORGAN, et al.,

Defendants.

NO. C09-1784 BHS/KLS

ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND COMPLAINT

Before the court is Plaintiff's motion to file a second amended complaint. Dkt. 18. Plaintiff paid the filing fee and his original complaint was filed on December 22, 2009. Dkt. 5. Because he is not proceed *in forma pauperis*, the court directed Plaintiff to serve his original complaint and summons on the named Defendants within 120 days. Dkt. 14. To date, none of the named defendants has been served with process. Defendants do not oppose Plaintiff's motion to file a second amended complaint, but note that they have not been personally served with any version of Plaintiff's complaint. Dkt. 19, p. 5. In his reply, Plaintiff states that he will serve Defendants again. Dkt. 21.

Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 15(a), "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Otherwise, the party "may amend the party's pleading only by leave of court or by written consent of the adverse party." *Id.* Leave to amend "shall be freely given when justice so requires," and "this policy is to be applied with extreme liberality." *Id.*; *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9<sup>th</sup> Cir. 1990). After a responsive pleading has

1 been filed, "leave to amend should be granted unless amendment would cause prejudice to the  
 2 opposing party, is sought in bad faith, is futile, or creates undue delay." *Martinez v. Newport*  
 3 *Beach City*, 125 F.3d 777, 786 (9<sup>th</sup> Cir. 1997).

4 The court finds that the motion to amend should be granted. Plaintiff must serve the  
 5 named defendants with the Second Amended Complaint (Dkt. 18-2) within 120 days of the  
 6 date of this Order.<sup>1</sup>

7 Accordingly, it is **ORDERED**:

8 (1) Plaintiff's motion to amend his complaint (Dkt. 18) is **GRANTED**.

9 (2) The Clerk is directed to docket the "[Proposed] Second Amended Complaint"  
 10 (Dkt. 18-2) as Plaintiff's Second Amended Complaint, and to send a copy of this Order to  
 11 Plaintiff.

12 (3) Plaintiff shall serve copies of the Summons and Second Amended Complaint  
 13 on the named Defendants within 120 days of the date of this Order.

14 (4) Plaintiff's motion to amend (Dkt. 16) is **DENIED as moot**.

15 (5) The Clerk shall send copies of this Order to Plaintiff and counsel for  
 16 Defendants.

17 DATED this 15th day of June, 2010.

18 

19 Karen L. Strombom  
 20 United States Magistrate Judge

21  
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 24 <sup>1</sup>The federal rules of civil procedure permit a plaintiff to effect service "pursuant to the law of the state in  
 25 which the district court is located." Fed.R.Civ.P. 4(e)(1). Washington law permits the plaintiff to serve process by  
 26 way of mail or publication in very limited circumstances and only when personal service cannot be effected.  
 RCW 4.28.080, .100. However, in such cases, service is sufficient only if the plaintiff strictly complies with the  
 statute's procedural requirements. *Painter v. Olney*, 37 Wn.App. 424, 680 P.2d 1066 (1984).